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Report No. 764.

[To accompany bill S. No. 154.]

HOUSE OF REPRESENTATIVES.

WILLIAM B. STOKES.

July 19, 1848.

Mr. Godean, from the Committee on the Post Office and Post Roads, made the following

REPORT:

The Committee on the Post Office and Post Roads, to whom was referred Senate bill No. 154, for the relief of Wm. B. Stokes, report:

That they have very carefully considered the bill which proposes to pay to William B. Stokes, surviving partner of John N. C. Stockton, deceased, the sum of \$11,760, for extra services, alleged to have been performed by them as contractors for carrying the mail, for about seventy days, from Augusta, in the State of Georgia, to Mobile, in Alabama; said services having been rendered during the months of May, June, and July, in the year 1836.

The committee felt no little surprise that a claim of the magnitude of this should have been suffered so long to remain unsettled, if the same is well founded, and therefore they have examined it with the more care. It is unaccompanied by any report from the Senate's committee; but, on examining the papers, this committee find a report made, during the last Congress, by the Committee on the Post Office and Post Roads of this House. That report sets forth the points on which the petitioner relies, and the committee now annex it to their report, that he may have the full benefit thereof. It is as follows;

The Committee on the Post Office and Post Roads, to whom were referred the petition and papers of Wm. B. Stokes, surviving partner of John N. C. Stockton & Co., have had the same under consideration, and report:

The petition states that, in May, 1836, J. N. C. Stockton & Co. were the contractors to carry the mail from Augusta, Georgia, to Blakely, in Alabama, via Pensacola, Florida, in a two-horse coach, tri-weekly; that, at this time, the great northern and southern mail, from Washington to New Orleans, was carried from Augusta to New Orleans, via Milledgeville and Columbus, in Georgia, and Montgomery and Mobile, in Alabama, in four-horse post coaches, daily; that, in the month of May, 1836, the Creeks living in Alabama, between Columbus, in Georgia, and Montgomery, in the former State, broke out in open hostility against the whites, and, among other atrocities, stopped the mail, robbed its contents, and murdered some of the passengers; and that, taking possession of the intervening portion of the country between Columbus and Montgomery, they entirely obstructed the passage of the United States mail over this, its legitimate route, that, in this emergency, the Postmaster General, through his accredited agent, and over his own signature, forced the transportation of the mail of the upper route, carried daily in four-horse post coaches, on the lower route, the mail of which was carried in two-horse coaches, tri-weekly; that the performance of this service brought an extraordinary weight of mail, and which was the cause of excluding from their coaches many passengers; and that they have never received a cent of compensation for this extraordinary and unexpected service, and which has been refused them because the Post Office Department had not the power, under the law, to afford them adequate compensation. They now ask that the Postmaster General be authorized to settle their claim on the allowance of an adequate compensation for this service.

From an examination of a series of papers furnished by the Postmaster General, your committee find the statements of the petitioners to be true. The then Postmaster General, the honorable Amos Kendall, moreover, at the time admitted that, for this service, he would extend all the power of the department to afford adequate compensation; and, if that power was not sufficient, he would cheerfully seek its enlargement from Congress for this special purpose. It appears, however, this was never done; and, for the same want of power in the department, the compensation has never been made.

It appears, also, from the views of the honorable Amos Kendall, and his agent—at the time on the spot—that the contractors on the lower route would necessarily lose passengers, by the transportation on the lower route of the heavy mail of the upper route; and, indeed, these contractors were directed to exclude all passengers when it would interfere with the transportation of the mail—a circumstance which frequently took place. These contractors, from the papers presented to the committee, it appears, were by no

means anxious to have this unexpected and burdensome duty thrown on them, and it is certain that, according to the contract made by them with the Post Office Department, they were not bound to carry it. It was an exigency, however, of uncommon occurrence, which induced the Postmaster General to throw this duty on them; for it is evident the public would not have tolerated the interruption of the great southern and northern mail. Under this view of the exigency of the case, and under the assurances of the Postmaster General that they should be adequately compensated, they yielded, and it appears, performed the duty faithfully and to the satisfaction of the department.

When it is taken into consideration that two days' accumulation of the heavy mail of a four-horse daily post coach was thrown on a tri-weekly two-horse coach, it is evident the transportation of this additional mail must necessarily have impaired their capacity to carry passengers. And it must be remembered, too, that the same obstruction which caused the interruption of the mail on the upper route, would also interrupt the conveyance of passengers on that route, and would, of course, induce them to seek passage on the lower route. It is obvious, therefore, that passengers in abundance, in that year of great travel, would be seeking conveyance on the lower route, which the heavy mail to be transported would prevent these contractors from taking. This is in proof before the committee. A severe pecuniary loss was the necessary consequence to these contractors; not from any fault of theirs, but from an unexpected service growing out of an extraordinary emergency thrown on them, and which, neither by their contract, nor by any view of moral justice, were they required to perform.

Your committee, in view of all the facts derived from the papers furnished by the Postmaster General, from other proofs furnished to the committee, and from the attendant circumstances of the case, think the claim of the petitioners presents a justifiable case for the interposition of Congress.

They accordingly recommend the accompanying joint resolution.

The joint resolution, which accompanied this report was passed, and became an act of that Congress. It is as follows:

JOINT RESOLUTION for the relief of William B. Stokes, surviving partner of John N. C. Stockton and Company.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Postmaster General be, and he is hereby, directed to pay to William B. Stokes, surviving partner of John N. C. Stockton and Company, for carrying the mail in the year eighteen hundred and thirty-six on the lower or Florida route, in consequence of the interruption of the mail by the Creek hostilities on the upper route, such compensation as shall be established to be an adequate remuneration for the same, taking into consideration the value of the services performed, and the loss to the said contractors by the exclusion of passengers, as directed by the then Postmaster General; and it shall be the

duty of the Postmaster General to pay the amount so allowed out of the current appropriation for mail transportation.

The Postmaster General thereupon examined the case, and the following is his statement of the same, which was communicated to Congress at the opening of the present session, and may be found in the documents accompanying the President's message, at page 1362:

Upon an examination of the case, it appears that John N. C. Stockton & Company were contractors on the Florida route, from Augusta, Georgia, by Bainbridge and Pensacola, Florida, to Blakely, Alabama, in the spring of 1836, and were bound to take the United States mail three times in each week over the route in two-horse coaches, and in steamboats between Cedar Bluff and Pensacola, in 61 days, for the sum of \$18,240.

They had changed the service, as it is presumed, with the consent of the department, so as to perform that part of it between Pensacola and Blakely in steamboats, and between Augusta and Cedar Bluff in four-horse post coaches, alleging, as a reason for the change, bad roads and the high price of forage, and, probably, with a view of competing with the Georgia line for the transportation of travellers.

This was the actual service in operation when the mails were stopped, in May, 1836, by the Indian disturbances in Alabama. The great southern mail had been taken, prior to this time, on the upper of Georgia line daily, in four-horse post coaches, by Ward Taylor, John H. Avery, O. Saltmarsh, and Richard C. Stockton, on the route from Columbus, Georgia, by Montgomery, Alabama, to Mobile.

The Florida line was used alone for the transportation of the local mails. The mails were stopped by the Indians on that part of the route between Columbus and Montgomery. It became necessary, therefore, for the department to send the mails over some other route. On the 18th of May, 1836, the department directed that all mail matter from the north, for places south and west of Columbus, should be sent over the western route, by Wheeling and the rivers. This order was rescinded on the 20th of May, and again renewed on the 23d, and continued in force until the Indian disturbances had ended.

That portion of the route between Mobile and Montgomery was not interrupted by the Indians, and much of the mail matter coming north was sent to Montgomery, and then by Tuscaloosa, and through the State of Tennessee.

The contractor, Williamson, on the route between Montgomery and Tuscaloosa, claimed a large sum from the department for the extra mails taken over his lines, and obtained the passage of an act of Congress directing the settlement and payment of his account, which was done.

As soon as information was received by the postmaster at Mobile of the interruption of the mails on the Georgia line, without any

authority from the department, he made a contract with J. N. C. Stockton & Company for taking the great southern mail over their Florida line, advanced \$5,000 in cash, which was afterwards repaid to the department, and agreed, further, to pay at the same rate that the "said Stockton charges his passengers for extra baggage."

It was estimated in the department at the time, judging from the usual size and weight of the great southern mail, that it would cost the department about \$1,400 per trip, or at the rate of \$451,000 per annum. The contract was reported to the department on the 27th of May; on the same day declared illegal and extravagant, disavowed, and notice given to Stockton. He was, nevertheless, urged to continue the service, and assurance given that a liberal and just compensation would be made him by the department; and if the department had not the power to make him ample remuneration, that an appeal in his behalf would be made to Congress.

The service was continued on the Florida line until the 26th of July; the exact time of the commencement of this extra service does not appear. It was, probably, within a few days after making the contract. I have assumed 70 days as the time of its continuance.

The department seems, at all times, to have been ready to settle with Mr. Stockton and pay him for the extra service, upon the principles prescribed in the 23d section of the act of 1836; which prohibits extra pay to contractors, except in exact proportion to the increase of stock and expenses required for the additional service, when compared with the original contract.

Mr. Stockton insisted upon payment according to the contract with the postmaster at Mobile. He appealed to Congress, alleging that the extra mails (including the local) which they had carried, in that time—

Going south, weighed.....	18,429 pounds,
And going north.....	7,815 "
	<u>26,244</u> "

which, estimated at \$57 per hundred weight, the price he now alleges he charged for extra baggage—

Amounted to the sum of.....	\$14,959
Besides the cash paid.....	5,000

	<u>19,959</u>
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The mails are stated, upon the oath of John W. Moray, to have been weighed by him on the steamboats, and the above is the weight given by him and relied upon by Stockton in his application to Congress. V. W. Ripley also weighed the mails at Augusta, and furnished the weight to Mr. Stockton, but his certificate of the weight does not seem to have been presented to Congress, nor has it been to the department.

In acting upon this application, Congress treated the contract with the postmaster as a nullity, and directed that an "adequate remuneration be made for the services rendered," and in ascertaining that, the value of the services was to be considered as well as any loss which the contractors sustained from the exclusion of passengers, as directed by the Postmaster General.

The department was entitled, under the existing contract with Stockton, when the great mail was transferred to the Florida line, to the exclusive use of two horse coaches, if the size of the mails required it, and boats between Cedar Bluff and Pensacola, without any additional pay, to be run three times each week and in six and a half days' time. The service was, in truth, rendered in four-horse post coaches between Augusta and Cedar Bluff, and in steamboats between Pensacola and Blakely, and the claimant is entitled, under the resolution, to the difference in value of the two kinds of service. The claimant has omitted to show that any additional coaches or horses were bought, or drivers employed, or any money expended in consequence of the transfer of the great mail to that line, or that any losses were actually sustained from a sale of the coaches or horses upon a discontinuance of the service. He has chosen to rely, mainly, upon estimates of the number of coaches and horses which such increased service would require; estimates of the loss upon a sale of the property when the service was discontinued; the cost of hiring steamboats; the board and pay of drivers; the expense of keeping horses; repairing coaches, harness, &c., &c. Some of them making the actual expenses greatly exceed the contract price of taking the southern mail daily on the upper line, as well as the local mails on both of the lines.

A similar course has been adopted in the effort to show the loss sustained by the exclusion of travellers. The instructions given to Stockton to exclude passengers when the size of the mails required it, were but a repetition of the conditions in every mail contract. Their agents state that they frequently excluded passengers on account of the size of the mails; but how many were excluded, or how many taken, is not shown, as might have been done, by the production of the way-bills, which are usually kept by such companies, or by the settlement of accounts between partners.

Certificates and affidavits are produced that there was much travel on the upper line; that two lines of coaches had been run on it prior to the Indian disturbances, from which it is expected an inference will be drawn that the stages would have taken nine passengers each trip, and that the United States should pay them their usual price of \$56 for each passenger. The affidavit of Mr. Plitt, an agent of the department at the time, and Mr. Fuller, a contractor on the upper route, express similar opinions, and their strong convictions that nine passengers would have passed over the route each trip; and Mr. Plitt asserts that he offered to pay Stockton that amount for each trip, which would have cost the United States, if it had been accepted, \$504 per trip, each way; or \$1,008 for the round trip, amounting to \$367,920 for daily service each year.

If such a proposition had been accepted, the contract must have been rejected by the Postmaster General as illegal and extravagant.

The entire service on both lines, as contracted for by the same parties, daily, and in four-horse post coaches on the upper, and tri-weekly on the lower in two-horse coaches, cost the department the sum of \$42,612 each year; and yet, according to this estimate, for service in four-horse post coaches, three and a half times a week, the United States is to pay at the rate of \$183,960, in addition to the \$18,240 already paid for the local mails.

If the travel had been such as now represented, there can scarcely be a doubt that Stockton & Co. would have made the service, daily, for the accommodation of the public, and particularly so if each trip would have yielded \$504, the price of nine passengers.

In addition to this, Mr. Stockton relied upon the sworn statement of his own agent, when he applied to Congress, showing the weight of the mails, when he expected his pay to be regulated by weight, under his contract with the postmaster at Mobile. This statement shows that the entire weight of the mails, for 70 days, averaged daily, going south, 263 pounds, and going north, 112 pounds, or double those amounts on alternate days. This demonstrates, if true, and there is no reason to doubt it, as it was presented and relied upon as the basis of his claim, by Stockton himself, that the weight of the mails could not materially have interfered with the transportation of passengers, and particularly so as the service, on about one-half the route, was performed in steamboats.

The accumulation of three or four mails, at one place, before the regular transportation commenced on the lower line, may, and no doubt did, produce some inconvenience to contractors, as well as travellers. Whatever may have been the amount of travel on the upper line, before the Indian disturbances broke out, it is more than probable, from an apprehension of personal danger on either line, that a great proportion of the travel would have taken the western route going south, and by Montgomery and Tuscaloosa, on the western route, coming north, and that the loss of passengers on this route should be attributed to that, rather than to the size or weight of the mails.

The proposition of Mr. Plitt, the estimates or guesses, as set forth, give but little idea of the value of the services performed; and if there had been nothing else in the case, I doubt whether an award could have been properly made, for the want of proof.

The records of the department, however, furnish data upon which a fair, just, and reasonable, compensation may be made the parties for the extra services performed, and for which pay is now claimed.

At the annual lettings in the autumn of 1834, the service was so arranged on these two routes—the Florida and Georgia lines—that the great southern mail was sent, on alternate days, over each line, in four-horse post coaches, connecting at Blakely, for the following prices:

On the Florida line, \$27,240 per annum.

On the Georgia line, \$15,375 per annum.

This service was continued until the fall of 1835, when, at the instance of John N. C. Stockton, with the assent of the others interested; that portion of the great southern mail which had been transported over the Florida line was transferred to the Georgia line, which was made daily, and \$8,500 taken from the pay of the Florida line, and added to the pay of the Georgia line, and the Florida line reduced to two-horse post coaches, three times a week, and twenty-four hours more time given. (Thus, John N. C. Stockton & Co., and the contractors on the Georgia line, with the assent of the department, settling the value of transporting one-half of the great southern mail, excluding local mails, over this very route, at \$8,500 per annum. This arrangement took effect the 1st of January, 1836.)

There was nothing in the nature of the service to render it more difficult to perform, or more expensive to the contractors, or more valuable to the department in May, June, and July, 1836, than it had been the preceding year; and no reason is seen why the most ample justice would not have been done to the contractors, if, when the great mail was transferred to the Florida route, the pay, as adjusted by themselves, had been transferred with it.

There could be no hardship in this, when it is considered that John N. C. Stockton & Co., the contractors on the lower line, and who were probably interested with R. C. Stockton on the upper line, actually received full pay for taking the great mail on the upper line, when it was, in truth, taken on the lower line, and pay now claimed for it a second time.

It would seem to be but just that, as the great mail was not, in truth, taken over the Georgia line for 70 days, the sum to be paid the lower line for extra services, should be deducted from the pay on the upper line; but the pay due the contractors on the upper line has been settled and adjusted by the proper officers, at the proper time, and perhaps correctly; and I do not think myself authorized, by the joint resolution, to revise, or in any way interfere with the settlement for services on the upper line.

It is, therefore, my opinion, that the value of the extra service thus rendered, is more correctly ascertained by a reference to the contracts made, a few months before, between the same parties, for the precise service now claimed to have been rendered in May, June, and July, afterwards; and, in my judgment, it is a full and fair price for the services rendered. And if there was any loss of passengers in consequence of the mail having been so transferred from the upper to the lower line, that by paying them a full price for four-horse post coach service, rendered daily, at the prices fixed by themselves, it will be an adequate remuneration for all the extra services performed by them, as well as any damages which may have been sustained from the loss of travel.

It is therefore ordered that William B. Stokes, the surviving partner of John N. C. Stockton & Co., be paid, out of the appropriation for mail transportation, for seventy days service; at the

rate of \$17,000 per annum, for taking the great mail over the Florida line during the Indian disturbances, which amounts to \$3,256.

It will be seen then that the Postmaster General, after a very careful and critical examination of the case, awarded to the claimants but \$3,256, as the amount of compensation to which they were rightfully entitled, as adequate remuneration. The petitioner, however, not satisfied with the decision of his chosen arbiter, has waived the award, and, at the present session, has presented his petition to the Senate for a rehearing of his case, and out of it has grown the bill which gives him the sum of \$11,760, as at first stated; but upon what principle the calculation of the Senate is made, in allowing this most extraordinary amount, this committee is wholly at a loss to ascertain.

The committee readily see the basis of the calculation of the Postmaster General, and there is some reason to believe it is, in the main, correct. It is also supported by the fact that another contractor, upon a different route, has already received his pay for extra services in transporting a part of the very mail in question, and which, it is alleged, was carried upon this route to the exclusion of passengers. It is, indeed, a remarkable fact that contractors on three mail routes have been paid for carrying the same mail, or a part of it; and yet, not satisfied with this, one of them is still demanding more for the service, by his mode of calculation, than the whole mail pay on the three routes would amount to. These facts are disclosed in view of another, also, that from the 23d of May, 1836, till the close of the Indian hostilities, the period of the performance of the alleged extra services, *all mail matter from the north for places south and west of Columbus was, by an order of the department, sent over the western route by Wheeling and the rivers.*

Strange, indeed, it seems to the committee, if these facts are as stated, that there should have been much difficulty about the transportation of the mail on the southern route, as it is called. It appears that the contractors already had the stages, teams and all necessary arrangements for the transportation of the mail; for they, though not required by their contract to do so, were running four-horse post coaches on the route when the disturbances took place, and which rendered it necessary to change the mail from the northern to the southern route.

The contractors being thus provided, and being, as they were, already in the *actual employment* of the department, in doing for it *similar transportation* on a contiguous route, they agree to take the mail, usually carried on the northern route, "on the assurance given that a liberal and just compensation would be made them by the department; and if the department had not the power to make them ample remuneration, that an appeal would be made in their behalf to Congress."

The only question, then, is, what is a liberal and just compensation? This committee, not fully concurring in the views of the Postmaster General, plausible as they are in some respects, have,

under all the circumstances, agreed to give the petitioner the same sum which was actually paid to the contractors on the upper route, for services rendered by the petitioners during the suspension. The time thus employed is assumed by the committee at seventy-three instead of seventy days, as estimated for by the Postmaster General.

The whole amount of pay to the contractors, per annum, on the upper route (including the \$8,500 added from the lower) was \$23,875. Seventy-three days, it will be seen, are the fifth of a year precisely, and will entitle the petitioner, therefore, to the fifth of the above sum of \$23,875, which will be \$4,775. This sum is \$6,985 less than that provided in the bill, and is \$1,519 more than is allowed by the decision of the Postmaster General.

The committee believe it has become too much the practice of those in the employment of the government, to seek all occasions for a pretext for the most exorbitant charges for any little extra services they may chance to render. All such services should be paid for, but no more should be demanded than the services are reasonably worth. In this instance, the committee repeat that the charge made, and even as allowed by the bill, is beyond all measure too high, and if the service had been performed the entire year at that rate, would give to a single route \$58,800 per annum, while on the two lines before the disturbances, the cost to the department for the transportation of all the mails on the two routes was but \$42,615 !!! The difference, then, between the sum actually paid and that demanded for the entire year, would be \$16,185.

As it regards the claim for compensation for a supposed loss of passengers, the committee cannot believe, that when the Indian hostilities commenced, there could have been any great number of these; but even if there had been, the original contract with the petitioner's company here, was to carry the mail, with which the department, as is conceded, had a right to fill his stage, which was a two-horse one, converted afterwards, into a four-horse coach, by the contractors. The department then being in the difficulty it found itself in regard to the transportation of the mail, fills the four-horse stage of these contractors, with mail matter, and they agree to exclude all passengers for this very reason, and are to be paid therefor (for the mail) by the department, instead of receiving pay from the passengers that might chance to travel that route, in a time of danger, alarm, and difficulty, growing out of the hostile feelings of the more southerly Indians, also. On the upper route, passengers had been actually killed travelling with the mail, and the stages had been waylaid and attacked by the savages. Every day similar difficulties and dangers were apprehended farther south, and for this reason alone, the committee cannot believe the number of passengers was or could have been great.

Be that as it may, however, the petitioner will receive the most ample compensation for carrying the mail, instead of the passengers, which, as before said, he agreed to exclude in order that the mail might be carried in his stages. It is but fair that he should be paid for this, and the committee therefore recommend a modifi-

cation of the bill of the Senate, in conformity with the views herein expressed. This view is taken by the committee with the greater confidence that no injustice will be done to the petitioners, on a calculation based even upon a fair estimate of the number of passengers that might probably have been excluded from the stages by the additional mail matter cast upon this route. The petitioners estimate the value of a passenger's fare *through* on their route at \$56. Now, if they carried all their passengers *through*, this may be a fair estimate of the amount of [the fare of each; but is it reasonable to believe that all their passengers were of the class supposed? by no means. Suppose, however, that on a tri-weekly line, the number of passengers averaged five, which is taken to be a liberal estimate, at \$56 to each passenger, it would give per day (including the additional half day to each week) \$308; and this, when multiplied by 70 days, the time assumed by the Postmaster General, would make (as the pay properly due this company for the loss of passengers alone, estimating both ways, that is charging for five passengers each way) the enormous sum of \$43,020. Again, taking nine passengers as the average, both ways, and 73 days as the time employed, it would entitle the petitioners to the still greater sum of \$73,584! The committee mention these facts to show the fallacy of such calculations, and to demonstrate the incorrectness of the principles laid down by the petitioner in his estimates, &c.

It is very clear that nothing more is due than a fair compensation for the services rendered, and the best mode of ascertaining this, is to show the comparison between this service and the very same when rendered by another company; that sum the committee are willing to allow, and no more.